

Response to European Commission public consultation for a European Media Freedom Act (06/03/23)

Nordvision – the seven Nordic Public Service Media Companies.

Nordic public service media (Nordic PSM) play a vital democratic role across our region. Resting on strong and independent public service remits, we provide content that helps meet the democratic, social and cultural needs of our audience. We do this as part of an independent and pluralistic media environment that promotes societal participation and an informed public. This matters more than ever in times of crisis. Our reporting helps the public to understand unfolding events. We also provide entertainment and content that brings communities together, as well as ensure that the joys of culture and learning are available to everybody.

Together, we strive to offer world class content that reflect the life and languages of our region, by investing billions of euros every year in content and unique journalistic news stories. We play an important role in meeting challenges to the democratic debate, such as dis- and misinformation, by providing impartial news and factual programs, and by strengthening media and digital literacy. We also continuously raise the quality of our content and services and embrace new digital opportunities and flexible forms of distribution to reach audiences. Our role nevertheless builds on enduring, universal values of journalism: legitimacy, independence and trust from our audiences. These are at the heart of everything we do.

Overarching comments to the consultation on the EMFA:

- The Nordic countries are home to a strong tradition of freedom of expression. Finland and Sweden have the oldest constitutional protections for the freedom of the press anywhere in the world. Nordic media enjoy greater trust from the public than media in any other region across Europe. It is essential that the EMFA does not create risks for a unique tradition and legal framework that remains vitally important for both commercial and public service media. **In particular, the EMFA should be constructed so as not to generate any future risks for the well-functioning systems for the organisation, funding, remit and independence of PSM – systems that have been carefully developed and built up over a century of Nordic history.**
- **We do not see how a Regulation providing for a harmonisation approach, as opposed to a principles-based approach could be appropriate or proportionate.** Even apparently minor requirements through EU-legislation could have substantial ripple effects. One risk is that EU-legislation establishes a floor rather than a ceiling even for member states where PSM-independence is already well-protected. An additional risk of a harmonised EU-Regulation, rather than recommendations, is a vulnerability to unpredictable future shifts in the priorities of other member states that may not be in line with the strong tradition of freedom of expression in the Nordics, a risk that greater subsidiarity helps mitigate.. Consequently, **we consider an EMFA Recommendation by the European Commission as the appropriate tool.**
- The EMFA must be **consistent with EU primary and secondary law**, with the Treaty principles of proportionality and subsidiarity and the Amsterdam Protocol. The EMFA must therefore carefully respect the importance of national media competencies to shape and assess specific pluralism and independence, social and cultural issues. **Member States should have full**

discretion to safeguard the independence and pluralism of the media with due regard for the national context.

- The protection of media freedoms is heavily correlated to broader mechanisms for the protection of the rule of law – and the goals of the EMFA depend, therefore, not least on the extent to which the EU can ensure respect for rule of law in Europe. Without a genuine commitment to act against infringements in member states, efforts to promote media freedom and pluralism may be compromised.
- We urge the EU to set a high bar for global platforms to commit to fairness and to respect media freedom and media standards. The EMFA must **ensure that the brand and editorial integrity of media content is adequately protected online** and help secure access and findability of media services of general interest when operating on platforms.

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1. Nordvision welcomes the opportunity to provide feedback on the EMFA. Media freedom and pluralism are core EU values enshrined in the European Charter on Fundamental Rights. Informed citizenship and the fundamental right to freedom of expression and information can only be guaranteed in any democratic society through media freedom and pluralism, supported by high-quality, independent content. We welcome ambitions by the European Commission to further advance the situation for independence and pluralism of the media in Europe.
 2. Strong and independent PSM, together with independent commercial media and press, guarantee diverse, pluralistic and quality content and information for European citizens. The crucial role of PSM in ensuring media pluralism as well as cultural and social functions is clearly outlined in the EU Treaty Protocol on the system of public broadcasting. In many cases, national frameworks governing PSM as well as other media, are designed to achieve such aims and function well.
 3. The EMFA is an opportunity to outline recommendations on principles on transparency and independence that protect the media's role in society against threats and interference, while at the same time fully respecting the subsidiarity principles and members states' discretion and competence to regulate media.
 4. We therefore welcome that the EMFA will build upon the AVMS Directive (AVMSD). It allows for specific EU and national rules and schemes to serve public interest and promote pluralism. It also includes ensuring national governments and regulators can define media legislation tailored to fit the national context and cultural diversity.
 5. The EMFA must ensure the importance of national media competencies to shape and assess specific media pluralism and independence, social and cultural issues. Member States should have full discretion to safeguard the independence and pluralism of the media with due regard for the national context. The EMFA should carefully describe where EU recommendations bring value, whilst promoting self- and co-regulatory initiatives or cooperation between national regulators where appropriate. We therefore do not see how a Regulation providing for a harmonisation approach as opposed to a principles-based approach could be appropriate or proportionate.
 6. The EMFA must therefore be fully consistent with EU primary and secondary law, with the Treaty principles of proportionality and subsidiarity and the Amsterdam Protocol, which provides that the conferral, definition of the remit, organisation and funding of PSM is the competence of Member States. The EMFA must not weaken or undermine the equilibrium of the Amsterdam

Protocol through the use of secondary EU law, nor unduly limit member states flexibility to tailor their national media laws based on their individual constitutional systems.

7. Threats to the independence and findability of media - whether via governmental interference, intimidation of journalists, lack of transparency in ownership structures and concentration, commercial pressure or abusive conduct blocking access to content - undermine the overall state of media freedom and pluralism in Europe.

Below, we provide comments on [specific sections](#) of the Commission consultation.

I. Safeguarding media independence and media pluralism

8. Securing media independence and pluralism is reflected in national media laws across the EU as a cornerstone of democratic society. More coherence in media regulation may promote the internal market objectives but should never be at the expense of Member States' role to secure and promote media pluralism and cultural diversity.
9. National regulatory authorities (NRA) have an important role in regulating and ensuring media independence. To carry out this role effectively, NRAs must themselves be independent. Art. 30 AMVSD introduces an obligation for national regulatory authorities to be legally distinct from the government and functionally independent from governments and any other public or private body. Member states have the obligation to implement this new provision effectively.
10. We advocate for an approach developing **appropriate and proportionate national principles to safeguard (editorial) independence of all types of media** from government, political and economic actors. We also support Member States guaranteeing more generally media pluralism and freedom of expression, in accordance with the Treaties, the Charter of Fundamental Rights and AVMSD. There is no need to adapt systems of PSM governance that are already working well in ensuring PSM independence.
11. We are mindful of global online platforms' significant and growing influence for access to media content and information. By determining who sees what and when (based on algorithms, recommendation systems, community standards and terms and conditions) they impose private choices and decision on content for audiences, going beyond applicable national legislations. Currently, platforms moderate, remove or limit access to editorial content and services solely based on their own terms and conditions. Without adequate safeguards, this will have major implications for freedom of expression, media freedom and pluralism, as well as for the ability of citizens to easily find and access media content.
12. We urge the EU in particular to set a high bar for global platforms to commit to fairness and to respect media freedom and media standards. In the absence of any rules or oversight, it undermines respect for media rules in Europe and directly affects trust from audiences and viability in media online. Failure by platforms to properly attribute the identity (logos or trademarks) from media appearing on platforms also prevents citizens from understanding where content and services come from. If the proposed Digital Services Act/Digital Markets Act do not provide adequate safeguards in these fields, the EMFA must ensure that the identity and integrity of European media is adequately protected online, and help secure access and findability of media services of general interest for European citizens.

II. Transparent and independent media markets

13. Media ownership transparency is not only important to secure fair and effective competition but also to strengthen pluralism and promote informed citizenship. We believe that the EMFA is an opportunity to develop general EU transparency principles on media ownership, regardless of the way the media are financed (publicly or commercially funded). It can foster trust in the media and reinforce legitimacy. However, transparency principles should be proportionate in application and in the overall objective of enhancing freedom of expression and information.

III. Allocation of public resources in media markets

14. An independent, appropriate and sustainable funding framework guarantees PSM organisations the financial means necessary to fulfil their remit. Equally, there must be an appropriate and transparent system to define and update the public service remit. Member States need to take the necessary measures (irrespective of the method and the level of funding) to ensure:
- an effective mechanism so that **decisions made about funding are not influenced by undue political or commercial interests;**
 - **adequate and sustainable funding to enable the PSM to fulfil its role and remit,** and to secure for future planning in terms of investments and innovation.
15. There is no need for the EU to introduce additional mechanisms to monitor funding or the public service remit, since responsibility for these areas lies with member states in line with the Amsterdam Protocol. Meanwhile, as recipients of public funding, PSM acknowledge their responsibility to be transparent in how that funding is used, ensuring annual reports on allocation to NRAs.

IV. Regulatory cooperation and governance options

16. NRAs and supervisory bodies for the media play a key role in the oversight of media providers, including PSM, and their compliance with national and European legislation and standards. They are a guardian of freedom of expression and pluralism in broadcast and online media.

Respecting the national member state competence to regulate media, increased exchange of best practice and knowledge among NRAs is important. ERGA, as formally established by Article 30b of the revised AVMSD can be a general framework for such exchange on the EMFA. Further reflection is, however, necessary to ensure that all relevant NRAs and supervisory bodies for the media can play a role and that work in working groups and governance bodies is fully transparent. We consider further that the EMFA should avoid interfering with the media regulatory procedures and structures at national and supra-national level for which no malfunctioning has been observed.

Exchange on best practice among NRAs can be particularly important for the online sphere. Here the discussion on appropriate prominence of general interest content should be highlighted as an important topic. Stated in the revised AVMSD, national governments are invited to provide for adequate prominence regimes for general interest content, including PSM services. Given the slow implementation of prominence regimes at national level after the revised AVMSD, exchange of best practises among Member states could be useful to stimulate take up and ensure access to accurate and trustworthy information, as well as contribute to freedom of expression and diversity of opinions. Recent political developments have shown that stimulation of and access to general interest content is vital for democracy and not a barrier to the functioning of the single market.